

SPECIAL COURT OF REVIEW 10-0001
INQUIRY CONCERNING JUDGE NO. 96,
THE HONORABLE SHARON KELLER

CHARGING DOCUMENT

TO THE HONORABLE JUSTICES OF THE SPECIAL COURT OF REVIEW:

Pursuant to Section 33.034(d) of the Texas Government Code, the Examiner for the State Commission on Judicial Conduct (“Commission”) hereby files with the Clerk this Charging Document, requesting that this Special Court of Review conduct its review of the sanction issued by the Commission by trial de novo.

I. (The sanction issued by the Commission)

As required by Section 33.034(d) of the Texas Government Code, attached as **Exhibit One** is the sanction issued by the Commission on July 16, 2010, styled Commission’s Findings, Conclusions And Order Of Public Warning. **Exhibit One** and its contents are incorporated by reference as if set forth verbatim herein.

II. (Facts)

Without limiting the foregoing, the Examiner specially pleads the following facts:

1. At all times relevant hereto, the Honorable Judge Sharon Keller has been the Presiding Judge of the Texas Court of Criminal Appeals (“TCCA”) and continues to perform her judicial duties.

The Execution Scheduled on September 25, 2007

2. Michael Wayne Richard (“Richard”) had been convicted of a capital crime and was scheduled for execution by the State of Texas on September 25, 2007, at 6:00 p.m. Judge Keller knew of the scheduled execution.

The Execution-Day Procedures

3. The TCCA’s Execution-day Procedures call for the assignment of a designated judge to be in charge of each scheduled execution, and provide as follows:

All communications regarding the scheduled execution shall first be referred to the assigned judge. The term “communications” includes pleadings, telephone calls, faxes, e-mails, and any other means of communication with the Court. The assigned judge may call a special conference or gather votes by telephone, e-mail, fax, or other form of communication.

If the communication includes a request for stay of execution, the assigned judge shall contact, by any reasonable means, the other members of the court and request a vote on the motion to stay. “Reasonable means” includes calling a special conference and contact by electronic communication. Non-assigned judges will provide to the assigned judge an adequate means of contact, such as home and cellular telephone numbers or other means of prompt contact.

4. The TCCA Execution-day Procedures were unwritten until November 2007, when they were put in writing. The oral protocol in effect on September 25, 2007, was identical to the written procedures created in November 2007.
5. The procedures set out in **paragraph 3**, above, were in effect at all dates relevant to this proceeding, and Judge Keller knew and was familiar with them.
6. The TCCA Execution-day Procedures are the vehicle by which the TCCA assures that one judge will be informed about the circumstances of the scheduled execution and will be available at all times on execution day up until the event of execution, no matter how late that may occur. The TCCA Execution-day Procedures were adopted as part of the Court’s responsibility for due process. They assure that persons scheduled to be executed on a given day will have access to an open Court at all times prior to the event of execution. The TCCA Execution-day Procedures require that all communications on that date regarding the scheduled execution be first referred to the assigned judge, so that there will be no inconsistency or unintended consequences in the addressing and disposition of those communications. The TCCA Execution-day Procedures had no exception for administrative or non-substantive communications, but encompassed all communications regarding the scheduled execution.
7. The term “communications” in the TCCA Execution-day Procedures or protocol in effect on September 25, 2007 included pleadings, telephone calls, faxes, e-mails, and any other means of communication with the Court.
8. The TCCA’s Execution-day Procedures assure that no delay or misdirection might occur to last-minute communications regarding the scheduled execution. Its mandatory “shall” and its encompassing “all communications” are safeguards to assure that the Court remains open up to the moment of execution, in case any issue – slight or great – needs attention before the irreversible event of death.

9. Compliance with the Execution-day Procedures is a duty of Judge Keller's office.
10. Texas Rule of Appellate Procedure 9.2(a) provides as follows:
 - (a) *With Whom*. A document is filed in an appellate court by delivering it to:
 - (1) the clerk of the court in which the document is to be filed; or
 - (2) a justice or judge of that court who is willing to accept delivery. A justice or judge who accepts delivery must note on the document the date and time of delivery, which will be considered the time of filing, and must promptly send it to the clerk.
11. TRAP 9.2(a) provides persons with a legal interest in a proceeding a means of access to the appellate courts beyond the normal office hours of the court clerks and the right to be heard either by the clerk or a judge as to the acceptance of a filing after hours.

The Assigned Judge

12. The Honorable Judge Cheryl Johnson was the assigned judge under the TCCA's Execution-day Procedures with respect to Richard's scheduled execution on September 25, 2007.
13. The identity of the assigned judge for the September 25, 2007 execution was not public information.
14. The identity of the assigned judge for the September 25, 2007 execution under the TCCA's Execution-day Procedures was unknown to Richard's representatives.
15. Judge Johnson and some other TCCA judges intended to stay at the TCCA on September 25, 2007, and remain available until word of the execution was received.

Anticipation of a Filing Based Upon *Baze*.

16. On the morning of September 25, 2007, the United States Supreme Court announced that it would hear the case *Baze v. Rees*, which raised the issue of whether Kentucky's three-drug protocol for lethal injection violated the Eighth Amendment's prohibition against cruel and unusual punishment. The decision in *Baze* could have impacted Texas's death penalty procedure, which uses a similar three-drug protocol.
17. At 11:12 a.m., on September 25, 2007, Judge Keller received a copy of the *Baze* petition for certiorari, which the United States Supreme Court had granted that morning, and a copy of the Kentucky Supreme Court decision in *Baze*. At 11:13 a.m., Judge Keller acknowledged her receipt of the information.

18. At 11:29 a.m., on September 25, 2007, TCCA General Counsel Edward Marty sent an e-mail to all of the TCCA judges with the subject line, "Execution Schedule." In the e-mail Marty informed the TCCA judges, including Judge Keller, that, "The [United States] Supreme Court has just granted cert on two Kentucky cases in which lethal injection was claimed to be cruel and unusual . . . I do not know if Michael Wayne Richard will try to stay his execution for tonight over this issue or in what court."
19. At 1:30 p.m., on September 25, 2007, the Honorable Judge Cathy Cochran informed members of the TCCA, including Judge Keller and Marty, of an internet link to the Kentucky Supreme Court's unanimous decision in *Baze*.
20. Members of the TCCA anticipated that Richard's counsel would likely attempt some type of filing with the TCCA based on *Baze*.
21. In the early afternoon of September 25, 2007, Marty began drafting a proposed order for the TCCA in anticipation of Richard's filing based on *Baze*. By 3:20 p.m., Marty had completed his preparation of a draft order denying relief, if any such filing were to occur.
22. The Honorable Judge Tom Price drafted a dissenting opinion in the event Richard's anticipated request for stay was denied.
23. At approximately 2:40 p.m., on September 25, 2007, Marty sent an e-mail to all of the TCCA judges, including Judge Keller, with the subject line, "Michael Wayne Richard update." In the e-mail, Marty informed the TCCA judges that the Harris County District Attorney's Office had just called and informed him that Richard's lawyers had called the Harris County District Attorney's office and confirmed that Richard's lawyers planned to file a writ of prohibition and subsequent application on behalf of Richard based on the issue in *Baze* for which certiorari had been granted that morning. Marty promised to keep the judges informed and circulate a copy of any pleadings when he received them.
24. Judge Keller left her chambers at the TCCA at about 3:45 p.m., on September 25, 2007, and returned home. Judge Keller did not return to the TCCA that day. Before she left for the day, Judge Keller had seen the 2:40 p.m. e-mail from Marty concerning anticipated filings on behalf of Richard.

Communications Regarding the Scheduled Execution

25. At approximately 4:40 p.m., on September 25, 2007 Dorinda Fox of Texas Defender Service ("TDS") called the TCCA deputy clerk, Abel Acosta, and told Acosta that TDS wanted to file something, that it was running late and would like to file late. Acosta told Fox that he would need to check with someone.
26. Immediately after speaking with Fox, Acosta called Marty and told him of the telephone call from Fox. According to Marty, Acosta said, "[t]hey were having trouble getting it and want[ed] the Court to stay open late."

27. Marty did not then know that the TCCA's Execution-day Procedures required that all communications regarding the scheduled execution must be first referred to the assigned judge.
28. In response to Acosta's call, Marty called Judge Keller at her home at about 4:45 p.m. on September 25, 2007 looking for direction. Marty recalled telling Judge Keller that a representative of Richard's legal team had asked to keep the Court open past 5:00 p.m. Marty thought that Judge Keller might say "yes," or at least something other than "no," but Judge Keller said "no." She then asked, "Why?" Marty explained that they wanted to file something, but they were not ready. "They were having trouble getting it," he said. Judge Keller again responded "no." She said, "We close at 5:00 p.m."
29. Based on Judge Keller's reply, Marty told Acosta (i) that the Presiding Judge said we close at 5:00 p.m. and (ii) that the Court wasn't going to accept something after 5:00 p.m.
30. Acosta called Fox of TDS at approximately 4:48 p.m. on September 25, 2007 and told her that he had been told to tell her, "We close at 5:00 p.m." Fox of TDS asked Acosta if she could take the filing to the Court and drop it with a security guard. Acosta replied he did not know what good that would do because a security guard would not accept it.
31. At about 5:07 p.m., on September 25, 2007 Melissa Waters of TDS called Acosta to make sure that TDS understood his message. She asked Acosta to confirm that the Court would not accept a late filing, as it had done so on previous occasions. She also asked him if TDS could e-mail or fax the filing to the TCCA.
32. Acosta told Waters that the decision had already been made not to accept a filing after 5:00 p.m. He also said that fax or e-mail filings would not be permitted.
33. Acosta regularly works at the clerk's office from 8:30 a.m. until 5:30 p.m. On September 25, 2007, he planned to and did stay in the clerk's office until 7:00 p.m. He testified that if the decision had been his, he would have accepted the filing after 5:00 p.m. and that it would have caused him no hardship. Acosta believed that "the decision had been made" and that he had received Presiding Judge Keller's instructions and that he could not act differently. He believed he could not talk to a different judge about the communication because it would have been going behind the Presiding Judge's back and would have been disloyal to her.
34. Acosta knew that a judge was assigned for the Richard execution day, but Acosta did not know of the Execution-day Procedures or of any requirement that the communication be first directed to the assigned judge. As of September 25, 2007, he had never received any training concerning the Execution-day Procedures in his 17 years at the TCCA.
35. At approximately 4:59 p.m. on September 25, 2007, Judge Keller called Marty from her home and asked him whether representatives for the person scheduled to be executed on

that day had filed anything with the TCCA concerning the scheduled execution. Marty told Judge Keller they had not.

36. Either in the 4:45 p.m. call or the 4:59 p.m. call, on September 25, 2007, Judge Keller asked Marty why the clerk's staff should be made to remain after hours for lawyers who cannot get their work done on time.
37. Fox called Acosta at approximately 5:56 p.m. on September 25, 2007 and told him that she was headed to the Court to hand-deliver the filing on behalf of Richard. Acosta told Fox, "Don't bother. We're closed." Fox also asked, either in the 4:48 p.m. or the 5:56 p.m. telephone call, whether electronic filing might be accepted, and she was told no.
38. At approximately 6:22 p.m., on September 25, 2007, Marty called Judge Keller at her home and described to her several activities, including a late effort at or about 5:57 p.m. to file papers on Richard's behalf in the Harris County district courts, the efforts on Richard's behalf to achieve relief in the United States Supreme Court, and the fact that Richard had not yet been executed. As was the case with Judge Keller's 4:45 p.m. and 4:59 p.m. communications with Marty, she did not insist during the 6:22 p.m. call that he comply with the Execution-day Procedures.
39. In her telephone conversations with Marty on September 25, 2007, Judge Keller did not give Marty any guidance about the Execution-day Procedures and did not tell Marty to direct the TDS inquiries to Judge Johnson, the assigned judge. Instead, Judge Keller addressed and disposed of the communications from TDS. Both Acosta and Marty understood and treated Judge Keller's responses to be her decision and their marching orders. Hence, Acosta told TDS that the decision not to accept a late filing had already been made.
40. Neither Judge Johnson nor the other judges who remained at the Court after 5:00 p.m. were aware on September 25, 2007, that Richard's legal team had called to ask whether filings after 5:00 p.m. could be accepted. When Judge Johnson left the Court that evening, she was "quite surprised" that nothing had been filed.
41. If the assigned judge, Judge Johnson, had learned of the TDS communications on September 25, 2007, she would have accepted the filing.

What Judge Keller Knew

42. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that a person (Richard) was scheduled to be executed at 6:00 p.m. that evening.
43. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that Marty's calls were about the execution that was scheduled that evening.

44. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that certiorari had been granted in *Baze* that morning.
45. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that the United States Supreme Court's grant of certiorari in *Baze* was for the purpose of reviewing whether Kentucky's lethal injection protocol violated the "cruel and unusual punishment" clause of the United States Constitution.
46. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that Texas' method of execution used a lethal injection protocol and that a decision in *Baze* could have an impact on executions in Texas.
47. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that the person scheduled to be executed that evening was likely to attempt to file a motion to prevent the execution based on the issue in *Baze*, as had been brought to her attention in the 2:40 p.m. e-mail from Marty; and she knew that she therefore might be called upon later that day to vote whether to grant or deny relief in the event any motions were filed.
48. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that representatives for the person scheduled to be executed that evening wanted to file something with the TCCA.
49. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that the representatives for the person scheduled to be executed that evening were not ready to file with the TCCA by 5:00 p.m.
50. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that the representatives for the person scheduled to be executed that evening had requested that they be permitted to file with the TCCA after 5:00 p.m.
51. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that the Execution-day Procedures called for the assigned judge to remain available after hours to receive last-minute communications regarding the scheduled execution.
52. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that a specific judge was the assigned judge for the scheduled execution.
53. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that she was not the assigned judge in charge of that evening's scheduled execution.
54. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller knew that under the TCCA Execution-day Procedures, all communications

relating to the scheduled execution that evening were required to be first referred to the assigned judge.

55. At the time of her telephone conversations with Marty on September 25, 2007, Judge Keller did not know whether Acosta or Marty did, or did not, know applicable requirements under the Execution-day Procedures. She knew that she had never given training to either of them concerning the Execution-day Procedures, and she was unaware of their having received training from any other source.

What Judge Keller Did and What She Failed to Do

56. On September 25, 2007, Judge Keller's duties of office required her to abide by the Execution-day Procedures.
57. On September 25, 2007, Judge Keller did not tell Marty to direct the communications to the assigned judge. Her failure to do so was intentional, and not inadvertent.
58. On September 25, 2007, Judge Keller addressed and disposed of the communications regarding the scheduled execution. Her doing so was intentional, and not inadvertent.
59. On September 25, 2007, Judge Keller did not refer the communications to the assigned judge, as required by the Execution-day Procedures. Her failure to do so was intentional, and not inadvertent.
60. On September 25, 2007, Judge Keller caused Marty and Acosta to believe (i) that "the decision had been made" and (ii) that no late filing would be accepted nor referred to the assigned judge.
61. Judge Keller's addressing and disposing of the September 25, 2007 communications as described above interfered with Richard's access to court and right to a hearing as required by law under TRAP 9.2(a).
62. Judge Keller's addressing and disposing of the September 25, 2007 communications as described above was a failure to accord Richard access to court and right to a hearing as required by law under TRAP 9.2(a).
63. Judge Keller testified that, if she were now asked the same questions she was asked on September 25, 2007, and knowing the same things she knew on September 25, 2007, she would do nothing differently today.

Court Personnel Subject to Judge Keller's Direction and Control

64. On September 25, 2007, Marty was part of the TCCA court personnel, responsible to all nine judges. He was subject to Judge Keller's direction and control. Marty looked to

Judge Keller as the person to whom he had immediate reporting responsibilities, and as the person he would approach for direction, guidance, or interpretation of a rule.

65. On September 25, 2007, Acosta was part of the TCCA court personnel, responsible to all nine judges. He was subject to Judge Keller's direction and control.
66. Marty was seeking direction from Judge Keller at 4:45 p.m. on September 25, 2007 regarding the request from representatives for the person scheduled to be executed that evening to file with the TCCA after 5:00 p.m.
67. If Marty had been told by Judge Keller to refer the communication immediately to Judge Johnson, the assigned judge, he would have done so.
68. If Acosta had been told by Marty or by Judge Keller to refer the communication immediately to Judge Johnson, the assigned judge, he would have done so.
69. Judge Keller's failure to direct Marty or Acosta to relay the 4:45 p.m. communication to the assigned judge on September 25, 2007, as stated above, failed to require or assure that staff subject to her direction and control complied with the Execution-day Procedures on September 25, 2007.
70. By failing to require or assure that staff subject to her direction and control complied with the Execution-day Procedures on September 25, 2007, Judge Keller interfered with Richard's access to court and right to a hearing as required by law under TRAP 9.2(a).
71. By failing to require or assure that staff subject to her direction and control complied with the Execution-day Procedures on September 25, 2007, Judge Keller failed to require that staff subject to her direction and control accord Richard access to court and right to a hearing as required by law under TRAP 9.2(a).

Subsequent Events

72. At approximately 6:10 p.m., on September 25, 2007, TDS faxed a motion to stay Richard's execution to the United States Supreme Court.
73. On September 25, 2007, the United States Supreme Court denied Richard's motion to stay as stated in a fax at 8:01 p.m.
74. The failure of the TCCA to consider and rule on Richard's application for relief on September 25, 2007, compromised Richard's counsel's efforts in seeking a stay of execution from the United States Supreme Court.
75. Richard was executed by the State of Texas by lethal injection at 8:23 p.m. on September 25, 2007.

76. At 8:30 p.m. on September 25, 2007, Marty called Judge Keller to inform her that Richard had been executed.
77. The next morning, September 26, 2007, Judge Keller and the other TCCA judges met for a conference. At the end of the conference, several of the judges discussed their surprise that Richard's lawyers had not filed anything with the TCCA based on *Baze*.
78. During the September 26, 2007 conference, Judge Cochran, who was not yet aware of Marty's communications with Judge Keller the night before, posed a hypothetical scenario in which someone called the TCCA before 5:00 p.m., said they wanted to file something, but could not get it there before 5:00 p.m. Judge Cochran's position was that the TCCA should allow the late filing. Other judges expressed agreement with that viewpoint.
79. Judge Keller was present for that discussion at the September 26, 2007 conference but did not disclose to the other judges her communications with Marty the night before, nor the fact that TDS had called the TCCA concerning requests to file after 5:00 p.m.
80. Two days after Richard's execution, the United States Supreme Court granted a stay in the Carlton Turner execution, which was scheduled to take place in Texas on September 27, 2007. Turner had filed a motion for stay with the TCCA, which was denied. Although the TCCA denied the motion for stay, Turner's filing with the TCCA made him eligible to seek a stay from the United States Supreme Court. At approximately 10:00 p.m. on the night of Turner's scheduled execution, the Supreme Court granted the stay. Turner's stay was based on the same *Baze* claim.
81. On October 2, 2007, the TCCA granted a stay in the Heriberto Chi execution, which was scheduled at 6:00 p.m. on October 3, 2007. Chi's stay was based on the same *Baze* claim.
82. In April 2008, the United States Supreme Court issued an opinion on the merits in *Baze*, ruling that Kentucky's method of lethal injection was constitutional under the Eighth Amendment to the United States Constitution.
83. Between the time that the United States Supreme Court granted certiorari in *Baze* on September 25, 2007, and the time that the United States Supreme Court issued its opinion in *Baze* in April 2008, Richard was the only person in the United States to be executed.
84. Judge Keller's conduct in the Richard case on September 25, 2007, cast public discredit on Judge Keller, the judiciary, and the administration of justice in Texas.
85. Relatives of Richard filed a civil lawsuit against Judge Keller in Federal court. Judge Keller obtained a dismissal of that civil lawsuit. Part of Judge Keller's defense was based upon the doctrine of judicial immunity. Judge Keller stated in her pleadings that she "is entitled to judicial immunity" (i) "[b]ecause the grant or denial of a stay is a judicial act,

not an administrative one,” and (ii) the TDS communication that had been brought to her attention on September 25, 2007 “effectively was an oral request for a stay of execution.”

III. (Relevant Standards)

1. Article 5, Section 1-a(6)A of the Texas Constitution provides, in relevant part, that any justice or judge of the courts established by the Constitution or created by the Legislature may be removed from office for "incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice."
2. Section 33.001(b) of the Texas Government Code defines "willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" as, among other things: "(1) willful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business; (2) willful violation of a provision of the Texas penal statutes or the Code of Judicial Conduct; (3) persistent or willful violation of the rules promulgated by the supreme court; (4) incompetence in the performance of the duties of the office; . . . "
3. Canon 3B(8) of the Texas Code of Judicial Conduct requires that “[a] judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. . . . A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control.”
4. Canon 3C(1) of the Texas Code of Judicial Conduct requires that “[a] judge . . . should cooperate with other judges and court officials in the administration of court business.”
5. Canon 3C(2) of the Texas Code of Judicial Conduct requires that “[a] judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge . . . in the performance of their official duties.”

IV. (Charges)

CHARGE I

Judge Keller's failure to follow TCCA's Execution-day Procedures on September 25, 2007, and failure to require or assure compliance by the TCCA General Counsel and clerk staff with respect to Richard's right to be heard, constitutes willful or persistent conduct that is clearly inconsistent with the proper performance of her duties as a judge of the TCCA and as the Presiding Judge, in violation of the standards set forth in (i) Article 5, Section 1-a(6)A of the Texas Constitution, (ii) 33.001(b) of the Texas Government Code, (iii) Canon 3B(8) of the Texas

Code of Judicial Conduct, (iv) Canon 3C(1) of the Texas Code of Judicial Conduct, and (v) Canon 3C(2) of the Texas Code of Judicial Conduct.

CHARGE II

Judge Keller's failure to follow TCCA's Execution-day Procedures on September 25, 2007, and failure to require or assure compliance by the TCCA General Counsel and clerk staff with respect to Richard's right to be heard, constitutes willful or persistent conduct that casts public discredit on the judiciary or the administration of justice, in violation of the standards set forth in (i) Article 5, Section 1-a(6)A of the Texas Constitution, (ii) 33.001(b) of the Texas Government Code, (iii) Canon 3B(8) of the Texas Code of Judicial Conduct, (iv) Canon 3C(1) of the Texas Code of Judicial Conduct, and (v) Canon 3C(2) of the Texas Code of Judicial Conduct.

CHARGE III

Judge Keller's conduct on September 25, 2007, did not accord Richard the right to be heard according to law. Judge Keller's conduct constitutes willful or persistent conduct that is clearly inconsistent with the proper performance of her duties as a judge of the TCCA and as the Presiding Judge, in violation of the standards set forth in (i) Article 5, Section 1-a(6)A of the Texas Constitution, (ii) 33.001(b) of the Texas Government Code, (iii) Canon 3B(8) of the Texas Code of Judicial Conduct, (iv) Canon 3C(1) of the Texas Code of Judicial Conduct, and (v) Canon 3C(2) of the Texas Code of Judicial Conduct.

CHARGE IV

Judge Keller's conduct on September 25, 2007, did not accord Richard the right to be heard according to law. Judge Keller's conduct constitutes willful or persistent conduct that casts public discredit on the judiciary or the administration of justice, in violation of the standards set forth in (i) Article 5, Section 1-a(6)A of the Texas Constitution, (ii) 33.001(b) of the Texas Government Code, (iii) Canon 3B(8) of the Texas Code of Judicial Conduct, (iv) Canon 3C(1) of the Texas Code of Judicial Conduct, and (v) Canon 3C(2) of the Texas Code of Judicial Conduct.

CHARGE V

Judge Keller's failure to follow TCCA's Execution-day Procedures on September 25, 2007, and failure to require or assure compliance by the TCCA General Counsel and clerk staff with respect to Richard's right to be heard, constitutes incompetence in the performance of duties of office, in violation of the standards set forth in (i) Article 5, Section 1-a(6)A of the Texas Constitution, (ii) 33.001(b) of the Texas Government Code, (iii) Canon 3B(8) of the Texas Code of Judicial Conduct, (iv) Canon 3C(1) of the Texas Code of Judicial Conduct, and (v) Canon 3C(2) of the Texas Code of Judicial Conduct.

V. (Prayer)

The Examiner respectfully requests that this Special Court of Review review the Commission's sanction by trial *de novo* as that term is used in the appeal of cases from justice to county court pursuant to Section 33.034(e)(2) of the Texas Government Code and issue its decision.

Respectfully submitted,

EXAMINER:
Seana Willing
Executive Director
Texas Bar No. 00787056

SPECIAL COUNSEL

John J. McKetta, III
State Bar Number 13711500
Michelle Alcala
State Bar Number 24040403
GRAVES DOUGHERTY HEARON & MOODY, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701
(512) 480-5716 Telephone
(512) 536-9916 Telecopier

By: /s/ John J. McKetta III

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this 2nd day of September, 2010, via electronic mail, facsimile transmission and U.S. certified mail, return receipt requested, on the following:

Mr. Charles "Chip" Babcock
JACKSON WALKER, LLP
1401 McKinney Street, Suite 1900
Houston, Texas 77010

/s/ _____
John J. McKetta, III